

EXHIBIT 5

TRANSCRIPT

07:07:18 01 This is Guinevere suses Sonos or Sonos versus Google Page 1

07:07:55 01 This is Google Sonos or Sonos versus Google trial day 1 Page 1

07:08:15 02 (mr. Sullivan is doing opening argument for the Plaintiff
07:08:20 03 Sonos).

07:15:03 04 MR. PAK: Is going to be Mr. Pak and.

07:15:07 05 MR. SULLIVAN: Is going to be Mr. Sullivan '966 is
07:17:27 06 patent 966 '966 or nine is patent 966 '885.

07:18:13 07 THE CLERK: All rise.

07:27:23 08 THE CLERK: Calling civil action 20-6754, Sonos, Inc.
07:27:34 09 versus Google, LLC, and related action.

07:27:37 10 Counsel, please approach the podium and state your
07:27:39 11 appearances for the record, beginning with counsel for Sonos.

07:27:42 12 MR. SULLIVAN: Good morning, Your Honor; Shawn
07:27:51 13 Sullivan on behalf of Sonos.

07:27:52 14 MR. SULLIVAN: Would you like me to introduce the rest
07:27:52 14 Would you like me to introduce the rest of the table?

07:27:55 15 Libby Molton, Dan Smith, David goes go, Alisha aleash

07:27:55 15 Libby Molton, Dan Smith, David goes go, Alisha card legal
07:28:01 16 Roberts and Elaina a chassis zoom is our corporate

07:28:04 17 representative, Your Honor.

07:28:05 17 THE COURT: Okay. Thank you.

07:28:06 19 MR. PAK: Good morning, Your Honor, Sean Pak on behalf
07:28:09 20 of Google and with me is Melissa Baley, Lindsey Cooper, James
07:28:13 21 Juda, our corporate representative Ken McKay and Eman Lordgooei

07:28:18 22 Thank you, Your Honor.

07:28:19 24 When the jury returns and -- in 30 minutes or so we will
07:28:27 25 have you introduce everyone again so they can start learning
07:28:36 01 the names.

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07:28:36 02 Okay let's start with our first -- we have a -- we ran out
07:28:36 02 Okay. Let's start with our first -- we have a -- we ran
07:28:45 03 out of potential jurors last week, and I made a decision to go
07:28:51 04 with seven rather than eight, which leads to the question
07:28:55 05 whether we should stipulate to a five-person jury, if need be.
07:29:01 06 I have no inside information, I should tell you that, as to
07:29:06 07 anything that has -- you know, whether somebody has -- is going
07:29:11 08 to drop out or not.

07:29:15 09 Now, during the trial we can't have what just happened
07:29:20 10 here. We can't have distractions like that, so we have to
07:29:24 10 be -- nothing that would distract the jury anyway.

07:29:30 12 Let me ask Sonos first would you stipulate to a five

07:29:30 12 Let me ask Sonos first, would you stipulate to a
07:29:34 13 five-person jury if need be?

07:29:35 12 MR. SULLIVAN: No, Your Honor.

07:29:36 13 THE COURT: How about Google.

07:38:17 05 All right. So that's the ruling.
 07:38:18 04 MR. PAK: Thank you, Your Honor.
 07:38:19 07 THE COURT: I'm not allowing -- it's okay for her to
 07:38:21 08 testify, but on cross-examination Mr. Pak can blow her out of
 07:38:25 08 the water with all of these other patents and what happened to
 07:38:28 10 them. I look forward to that cross-examination. All right.
 07:38:32 11 THE COURT: Next problem. What's the next problem.
 07:38:32 11 Next problem. What's the next problem.
 07:38:33 12 MR. RICHTER: Your Honor, I think there's one other
 07:38:36 13 issue in that motion for clarification, actually, if I may and
 07:38:39 14 what makes this.
 07:38:39 13 THE COURT: What else is there.
 07:38:42 16 MR. RICHTER: -- a unique case was, there was a
 07:38:44 17 history of patents that Sonos --
 07:38:45 18 THE COURT: The family thing, no. The family is out.
 07:38:48 19 A family is never enough. The family is never enough to say
 07:38:53 20 that patent hadn't even issued yet when they were studying
 07:38:56 21 those patents, so no family. I have already ruled that the
 07:39:00 22 family is not enough. You cannot use the family to justify
 07:39:04 23 that they were on notice of the actual patent itself when it's
 07:39:08 24 a complete falsehood. They were not, end of story, so don't
 07:39:12 25 even go there. That's the ruling.
 07:39:14 01 MR. RICHTER: I think.

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07:39:14 25 THE COURT: That's the ruling.
 07:39:16 03 MR. RICHTER: Can I make one objection for.
 07:39:18 04 THE COURT: No, you cannot. You can put it in writing
 07:39:22 05 later.
 07:39:22 06 MR. RICHTER: Okay. Thank you.
 07:39:24 07 MR. RICHTER: What's the next thing I can help you
 07:39:24 07 THE COURT: What's the next thing I can help you with?
 07:39:26 08 MS. BALEY: Melissa Baley for Google.
 07:39:32 09 MS. BALEY: Google has an objection to Sonos' opening
 07:39:32 09 Google has an objection to Sonos' opening slides that
 07:39:35 10 reference certain Sonos licensing agreements, and I would like
 07:39:39 11 to --
 07:39:39 12 THE COURT: Well, what's wrong with those licensing
 07:39:42 13 agreements? Are you objecting to the -- to the ITFF, or
 07:39:48 14 whatever it's called, and now you don't even want them to put
 07:39:51 15 in a real licensing agreement?
 07:39:54 16 MS. BALEY: I would like to explain why they are
 07:39:57 18 THE COURT: Please, go ahead.
 07:39:58 19 MS. BALEY: Just to set the stage with respect to each
 07:40:01 20 of those three agreements, Mr. Malison, the expert, has stated
 07:40:05 21 they are not comparable to the hypothetical license, and I do
 07:40:08 22 want to read those statements into the record just for a
 07:40:10 23 moment, if Your Honor would permit me. With respect to the
 07:40:12 24 ^lead licensing agreement, Sonos' expert says, Mr. Bakewell
 07:40:18 25 and I -- Mr. Bakewell is Google's expert. Mr. Bakewell and I
 07:40:21 01 both agree that that license is not comparable to the

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07:40:25 02 hypothetical license that would be granted in this matter.

07:40:26 03 With respect -- that's at page 45 of Mr. Malison's report.

07:40:32 04 With respect to the ^Lembrook license, Mr. Malison says
07:40:38 05 Mr. Bakewell -- and I agree -- that the Sonos' Lembrook license
07:40:42 06 is not probative of the outcome of the hypothetical negotiation

07:40:45 08 With respect to the ^Dennon license agreement, I find the
07:40:50 09 Sonos-Dennon agreement to not be probative of the outcome of
07:40:54 09 the hypothetical negotiation in this case. That's at pages 48
07:40:57 11 and 50.

07:40:58 12 And I just want to tell, Your Honor, why, why the experts

07:40:58 12 And I just want to tell Your Honor why, why the experts
07:41:03 13 agreed these -- that these licensing agreements are not

07:41:07 15 The first reason, the licenses are for Sonos' entire
07:41:13 16 patent portfolio. So both experts, for that reason, consider
07:41:19 17 them economically not comparable.

07:41:21 18 Sonos' expert doesn't apportion down from these rates that
07:41:27 18 are for an entire license. A rate -- sorry, that are for an
07:41:30 20 entire portfolio.

07:41:31 21 And rates for an entire portfolio are going to skew what
07:41:36 22 the jury is thinking is a reasonable royalty in this case,
07:41:39 23 which, of course, is limited to the patents.

07:41:41 24 THE COURT: Why can't they control for -- they say
07:41:44 25 this is for 25 patents and then here is the particular value of
07:41:49 01 this '966 patent and so you -- you reduce it down to, I don't

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07:41:54 01 know, 5 percent of the big number.

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07:41:58 03 MS. BALEY: There's a few reasons.

07:42:00 04 MS. BALEY: First of all they are cross licenses so it

07:42:00 04 First of all, they are cross-licenses, so it makes it a
07:42:03 05 lot more complicated. And we are going to spend a lot of time
07:42:06 06 on that.

07:42:06 07 THE COURT: You have to have an adjustment for the
07:42:08 08 cross-license.

07:42:09 09 MS. BALEY: Also, the counter-parties in those
07:42:11 10 agreements, they were -- leaving the speaker business and
07:42:16 11 aside, in reality they didn't actually pay those rates for very
07:42:20 12 long at all. And so we are going to be litigating that issue
07:42:23 13 as well, to explain to the jury why both experts said the rates
07:42:28 14 in these licenses were not comparable. It is going to take a
07:42:31 15 lot of time.

07:42:32 16 THE COURT: If we knock these out and we knock out
07:42:35 17 ITFF or IFTTT, if we knock that out, too, then they have zero.
07:42:40 18 They have no damages theory.

07:42:43 19 MS. BALEY: I don't know if that's the case.

07:42:45 14 THE COURT: How is that going to look?

07:42:48 15 MS. BALEY: Well, it's Sonos' burden, so I think
07:42:51 16 that's a separate issue about whether these licenses can come
07:42:54 17 in.

07:42:54 18 MS. BALEY: And the other issue that I just want to
 07:42:54 18 And the other issue that I just want to raise is if the
 07:42:57 19 only relevance -- the only relevance that Sonos says these
 07:43:01 20 licenses have to this case is not for the rates. Their expert
 07:43:05 21 said those rates were not comparable, can't rely on them.
 07:43:09 22 The only relevance that Sonos says these agreements have
 07:43:09 22 The only relevance that Sonos says these agreements have
 07:43:12 23 is to the form of the license that Sonos prefers a running
 07:43:16 24 royalty. That's the only relevance even now Sonos says that
 07:43:22 25 these agreements have to the case, so they are going to put
 07:43:24 01 them in to show running royalty.

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07:43:27 02 Google has 11 agreements non-economically comparable very
 07:43:27 02 Google has 11 agreements non-economically comparable, very
 07:43:31 03 low rates that show we prefer a lump sum, so we are going to
 07:43:34 03 have a trial where there's going to be now 15 license
 07:43:38 05 agreements that come into evidence. Witnesses are going to
 07:43:40 06 testify about them. Both experts agree they are not comparable
 07:43:44 07 to the hypothetical negotiation.

07:43:45 08 And there are going to be rates all over the place. We
 07:43:48 08 are going to put in 11 agreements with low rates because we
 07:43:52 10 like a lump sum. They are going to put in their three
 07:43:54 11 agreements to say that they want a running royalty. One of the
 07:43:57 12 three agreements isn't even a running royalty. It is a
 07:44:01 13 sideshow. It is the -- what's the expression? -- the tail
 07:44:06 14 wagging the dog.

07:44:08 15 The issue that the jury needs to decide is how much these

07:44:08 15 The issue that the jury needs to decide is how much these
 07:44:11 16 two patents are worth in a hypothetical negotiation between
 07:44:15 17 Google and Sonos. Everyone agrees nothing about the rates of
 07:44:19 18 these three agreements is relevant to that at all again. The
 07:44:24 19 only relevance Sonos says these agreements have is to the form
 07:44:28 20 of the royalty.

07:44:28 12 THE COURT: All right. What do you say in response.

07:44:31 15 MR. RICHTER: First, Your Honor, this is a motion in
 07:44:33 16 limine that they didn't raise. It is not fair to be bringing
 07:44:36 17 it to Your Honor ten minutes before we are going to make
 07:44:39 18 opening arguments.

07:44:40 19 MR. RICHTER: She told you an incomplete picture.

07:44:40 19 She told you an incomplete picture. Mr. Malison does rely
 07:44:43 20 on the licenses for the form and ^demonstrate Georgia pass
 07:44:47 21 factor number 4, which is Sonos' past desire to enforce its
 07:44:52 22 patent monopoly.

07:44:54 23 They can't come in with eight comparable licenses and hold
 07:44:57 24 our argument hostage and say: If you bring these three in, I'm
 07:45:01 25 going to bring in eight. And see, Your Honor, it's too much
 07:45:04 01 for the jury. That's not fair. We only want to tell the jury

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07:45:06 02 that we have entered into two royalty licenses.

07:45:09 03 THE COURT: But if your own guy says it's not

07:45:13 04 comparable, how do you get around that.

07:45:15 18 MR. RICHTER: He doesn't use it to factor into the
07:45:18 19 calculation of the royalty rate. ^He does rely on it that
07:45:21 20 Sonos prefers a running royalty. That's a fair use of these
07:45:24 21 licensing agreements. It's in his report, Your Honor. It's
07:45:27 22 just too late to be arguing this in is a motion in limine.

07:45:31 23 MS. BALEY: Your Honor, first of all, this is
07:45:32 24 objections to evidence, it is not a motion in limine. This is
07:45:36 25 what this morning is about.

07:45:37 01 MS. BALEY: Second of all, so you just heard that Page
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07:45:37 01 Second of all, so you just heard that Sonos agrees or is Page
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07:45:42 02 not disputing that the rates are not relevant. If they want to
07:45:47 02 say they have two licensing agreements that are running
07:45:51 04 royalty, fine, but to put the rates even when Sonos is saying
07:45:56 05 they are not relevant, to skew what the jury is thinking in
07:45:57 05 terms of valuation of two patents as ^opposed to thousands in
07:46:02 07 their portfolio, that would be wrong when Sonos isn't even
07:46:06 08 telling you here today that those rates are relevant to
07:46:08 09 anything they are saying. These agreements are only relevant
07:46:13 10 to the form of a license so someone can say, yeah, we have
07:46:16 11 entered into three agreements at running royalties. Google can
07:46:19 12 say we have entered into 11 that are lump sums, but to get into
07:46:23 13 the ins and outs of 15 licenses on both sides that are not
07:46:28 14 comparable that the experts both agree are not comparable is
07:46:32 15 403.

07:46:33 23 THE COURT: All right. Do you want to use any of this
07:46:38 17 during your opening statement?

07:46:39 17 MR. RICHTER: We have a slide, Your Honor, yes,
07:46:42 18 concerning three licenses that Sonos entered into. We are not
07:46:45 19 going to talk about the royalty rates in the license, just we
07:46:48 19 are going to say ^Ms. mystics is here to testify that Sonos has
07:46:54 21 entered into licenses with other parties.

07:46:55 22 THE COURT: That much you can say. However, I'm not
07:46:58 23 going to make a ruling on whether or not they come in.

07:47:01 24 Ultimately, if you want to gamble and double down in your
07:47:05 25 opening statement and say that these are coming into evidence,
07:47:07 01 you may wind up being wrong, because I don't know enough, on Page
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07:47:12 02 the spur of the moment, to say whether these should or should
07:47:15 03 not come into evidence and, if so, to what extent. But I don't
07:47:19 03 see there being any harm in you -- this is not like a bloody
07:47:24 05 picture of a traffic accident. This is patent stuff and
07:47:28 06 licensing stuff. It is boring. The jury will forget it in 25
07:47:33 07 minutes, and so it's not going to be harmful, at least the part
07:47:37 08 that you plan to use.

07:47:38 09 Now, it could be -- I wanted to say to you lawyers don't
07:47:43 10 say to me later, "Oh, Judge, you let us use it in the opening
07:47:47 11 and, therefore, it has to come in." No way. You make the

07:47:50 12 choice. Whenever the time comes and you want to mention it
 07:47:53 13 with a real witness, I may say Rule 403. I may say Rule 403.
 07:47:59 14 So, please, you are taking a chance. Maybe you shouldn't take
 07:48:05 15 that chance. It's -- that will be up to you.

07:48:09 16 I don't understand enough about these particular license
 07:48:14 17 agreements to make that call at this point, and I don't
 07:48:17 18 understand enough about the rest of the case to make the call

07:48:21 20 It is okay for Google to raise this point now. It's in
 07:48:26 21 the nature of a motion in limine, but that's the whole point of
 07:48:29 22 this 30 minutes is to bring up stuff like that. So they could
 07:48:34 22 have made the motion and objection at the time Malison
 07:48:39 24 testifies.

07:48:39 25 So -- that procedurally is not a correct statement.

07:48:44 01 Okay. So, that's my ruling.

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07:48:47 02 All right. What else can I help you with today.

07:48:49 03 MR. RICHTER: Thank you.

07:48:50 04 MR. PAK: Your Honor, I think we have a few
 07:48:57 05 evidentiary objections, Your Honor, that.

07:48:58 06 THE COURT: Well, here is one that's called -- this
 07:49:01 07 one right here -- prior art. I'm ready to make a ruling on
 07:49:04 08 this one.

07:49:04 09 MR. PAK: We resolved that issue. We fixed the title
 07:49:08 10 on that.

07:49:08 11 THE COURT: You fixed it? So I wasted time this
 07:49:11 12 morning going over that.

07:49:11 13 MR. RICHTER: I'm not sure what the fix is,
 07:49:15 14 Your Honor. Can you let us know what the fix is.

07:49:17 15 MR. PAK: We are going to say "prior art obviousness,"
 07:49:21 16 which is.

07:49:21 17 MR. RICHTER: I'm not sure that resolves it,
 07:49:24 18 Your Honor. The issue is that there is.

07:49:25 19 THE COURT: Who did you make your agreement with,
 07:49:30 20 Mr. Pak? I believe I have.

07:49:32 20 MR. PAK: Your Honor, we had another similar slide
 07:49:42 21 with the same title where the issue is they didn't want us to
 07:49:45 22 say it was prior art 2005 system.

07:49:52 23 THE COURT: This is not prior art. This is not prior
 07:49:54 24 art. This -- this internal e-mail from ^Rob Lambrown, that's
 07:50:01 25 not prior art. It's an e-mail that may help you in some way.
 07:50:04 01 It's not prior art.

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07:50:05 02 MR. PAK: We can take out the title, Your Honor.

07:50:06 03 THE COURT: I think what you should say -- don't even
 07:50:08 04 say Sonos 2005 system. Say 2005 e-mail, that's the title, and
 07:50:15 05 otherwise you can use it.

07:50:16 06 MR. PAK: Thank you, Your Honor.

07:50:16 07 THE COURT: That's the answer. See, instead of
 07:50:20 08 getting into a swearing contest over whether or not you had --

07:50:24 09 THE COURT: all right. That's the answer to that one.